



Constitution Committee

Corrected oral evidence: Executive oversight and responsibility for the UK constitution

Wednesday 20 November 2024

10.15 am

Watch the meeting

Members present: Baroness Drake (The Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Beith; Lord Falconer of Thoroton; Baroness Finn; Lord Foulkes of Cumnock; Baroness Goldie; Lord Strathclyde; Lord Thomas of Gresford.

Evidence Session No. 2

Heard in Public

Questions 32 - 59

Witnesses

[I](#): The Rt Hon Pat McFadden MP, Chancellor of the Duchy of Lancaster and Minister for Intergovernmental Relations, UK Government; The Rt Hon Nick Thomas-Symonds MP, Paymaster-general, Minister for the Cabinet Office and Minister for the Constitution and European Union Relations; Darren Tierney, Director General, Propriety & Constitution Group, Cabinet Office.

Examination of witnesses

Pat McFadden MP, Nick Thomas-Symonds MP and Darren Tierney.

Q32 **The Chair:** Good morning, gentlemen. We are absolutely delighted that you are here. We have several questions for you, obviously, or areas of interest, and hopefully you have had some indications of what they are. Mr McFadden, do you want to take the opportunity to make some opening comments, or would you prefer to go straight into questions?

Pat McFadden MP: I do not have anything substantive to say at the beginning, other than that we are very happy to be here. It is a long time since I have sat on this side of the table. There is a wide range of things to discuss. We do a great deal of work on the constitution in the Cabinet Office, and we are looking forward to your questions.

Q33 **The Chair:** Obviously, we have a list of your respective ministerial responsibilities in your roles. Maybe you could help the committee by fleshing out what you see as your constitutional responsibilities so that we have more of an in-depth feel.

Pat McFadden MP: Any discussion like this will always depend a bit on what exactly you define as constitutional, which is part of the issue in a system such as the UK's.

The Chair: That is my second question, so well anticipated.

Pat McFadden MP: If we take what we would normally consider as constitutional, in the Cabinet Office we have made some changes since the election. The principal constitutional responsibilities that we have are around intergovernmental relations, where there was a machinery of government change to bring the Union and Devolution Directorate back into the Cabinet Office, back into the centre of government.

My colleague Nick Thomas-Symonds, the Minister for the Cabinet Office, leads on House of Lords reform, which is a major constitutional issue. We have propriety and ethics in the Cabinet Office too. Those are probably our main responsibilities, but, for example, in terms of relations with Parliament, the Leaders of the Houses of Commons and Lords are in a ministerial sense located in the Cabinet Office. Then there are other parts that we may come on to, and that we regard as constitutional, around relations with the judiciary and legal system. Those are our main responsibilities.

Nick Thomas-Symonds MP: To add to that, and being cautious as to how you define constitutional, we do not have a codified constitution. We are not like the United States with any sort of higher form of constitutional law, power of entrenchment or anything like that. It is quite difficult sometimes to put that precise boundary in place.

My role, essentially, falls into three categories, some of which are constitutional and some of which are not. There is obviously the relationship between the United Kingdom and the European Union, which

clearly has constitutional implications. That is part of my role. I also lead, which is not constitutional but, as you can all imagine, is a significant part of what I do, on the Government's response to the infected blood inquiry and the infected blood compensation scheme, and inquiries more generally. Then, it is in relation to the constitution, from ethics and integrity to House of Lords reform, which I have no doubt we will come on to in due course.

Q34 The Chair: Thank you. Back in 2001-02 the then members of the Constitution Committee set out a working definition of the constitution. It might be worth putting back to you whether you think the five tenets identified at that time are, in your view, still valid. The five basic tenets were the sovereignty of the Crown in Parliament; the rule of law; the union state; representative government; and membership of the Commonwealth, European Union and other international organisations. Do you accept those five tenets?

Pat McFadden MP: Yes, it is as good a definition as any. Some of that has obviously changed since 2001, most notably our relationship with the European Union. The governmental responsibility for those five things will have moved around a bit, depending on the Administration and sometimes depending on the personnel. As a list of things that count as constitutional, it is as good a definition as any. I do not know if it is perfect because I do not know if you can have a perfect definition of the UK constitution, given its nature, but I am happy with your five.

Q35 The Chair: There are two quite distinct functions around the constitution. One is constitutional policy questions, such as constitutional reform and legislation that is driving change to the constitution. The second is oversight and advice in safeguarding the constitution. On the latter—the ongoing safeguarding of the constitution—who in Government at ministerial and official level is responsible for safeguarding the constitution? Who holds that real responsibility?

Pat McFadden MP: I think we all do. Anyone in public office who holds a position of responsibility has to hold it and act with regard to the constitution. It is not all located in one person. You could always argue that the pinnacle is the Prime Minister. Constitutionally, the Prime Minister has a lot of responsibilities, but in the real world a Prime Minister—whoever holds the office—is a very busy person, so there will be other people in a day-to-day sense acting on it. As well as Ministers like me and the Minister for the Cabinet Office, you have the Lord Chancellor, the Law Officers, the Commons and Lords Leaders, and a number of Ministers with particular constitutional responsibilities.

Going back to your list of five, I think one of them was representative government. One of the things that has happened since 2001 is that within England in particular we have had the development of quite powerful elected mayors. That is a newish development. Is it constitutional? Broadly speaking, we might say yes because it is about representative government. In that regard, the current responsibility for it lies with the Deputy Prime Minister and the Ministry of Housing,

Communities and Local Government. If we wanted to say a single person, we would say the Prime Minister, but I think the true and honest answer in the real world is that it is the different Ministers and departments that I have mentioned.

The Chair: We will have a question on the diffusion of that responsibility shortly, but is there not a key gatekeeper or overseer in terms of a civil servant or Minister who can see an emerging trend or stop something as a constitutional implication?

Pat McFadden MP: Quite a lot of it is now located in the Cabinet Office. The machinery of government changed, as I mentioned at the beginning. A lot of it was located in the Ministry of Housing, Communities and Local Government when we came into office four months ago. There was a good and very British reason for that. It had followed the particular Minister, who was Michael Gove. He had been the Chancellor of the Duchy of Lancaster when he became the Secretary of State for communities and local government. I think levelling up was in the title as well.

I quite understand why the previous Administration did that. I have very high regard for Michael Gove, but it is an example of where the responsibilities followed the personnel. The current Prime Minister thought it made more sense to take certainly intergovernmental relations and responsibility for the union as a whole back into the centre of government.

Going back to the list of five that you cited, quite a lot of that is now located in the Cabinet Office. We have the union devolution. We have the constitution directorate. You talked about international treaties and so on. We have left the European Union but relations with the European Union now that we have left—crucially the issue of the Windsor Framework and how it interacts with GB-Northern Ireland relations—are the specific responsibility of the Minister for the Cabinet Office. Quite a lot of it is now located in the Cabinet Office, although not all of it.

Q36 **Lord Falconer of Thoroton:** It is very good to see all three of you, if I may say so. You have described entirely coherently that every significant part of government might have some constitutional aspect in what it does. If you are dealing with local government and there is the creation of mayors, that has a constitutional element. If you are dealing with international relations, that might have a constitutional element. If you are considering whether the right to trial by jury should be reduced, that might have a constitutional element.

Everybody has a constitutional aspect. Does that mean that nobody is responsible for ensuring that there is no offence done to the constitution? I notice that Mr Tierney is in charge of something called the propriety and constitution group. I assume that somewhere in the Cabinet Office there is some overall responsibility for whether all these things, which obviously have to be diffused to some extent, offend against some constitutional principle or not.

Pat McFadden MP: I will let Mr Tierney outline the responsibilities of his group in a minute. To go to the heart of your question, in politics we might use the metaphor of the starving goat—the old tale that, if the whole village is responsible for feeding the goat, the goat starves because it is not specific.

Lord Falconer of Thoroton: The Prime Minister is responsible but, as you said, he is a busy man.

Pat McFadden MP: He is a busy man. I do not think this is a starving goat. I think the Ministers who are responsible take their responsibilities for it seriously, and so they should. I do not think this is something that, because you cannot say that one person owns all of it, automatically falls between the cracks and does not get done.

I am a believer in show, not tell, rather than making grand claims. To take intergovernmental relations, for example, we are making a serious effort to have what I would call a good and normal working relationship with the devolved Governments in Scotland, Wales and Northern Ireland. It will be show, not tell, because you have different politics around the table, and everybody has a place where they are coming from. I am not naive about how that can go, but it is a serious responsibility. We do not want grievance and division for grievance and division's sake. It is not something that we are going to ignore or play down.

If you took a different view—I suspect this is a very easy thing to write in a report—and said, “This all looks a wee bit untidy, so maybe we need to bring it all together and we'll pick somebody whose responsibility this should be because, after all, the Prime Minister is a busy person”, it would be quite tempting for report writers to do that. Who am I to say? The committee has every right to put that in its report, but just stand back and think a little bit about what you are asking that person to do.

To go back to Baroness Drake's list of five things, are we asking that person to be responsible for intergovernmental relations; House of Lords' reform if the Government of the day have an agenda on that; English mayors; relations with the legal system; relations with Parliament; electoral law and the franchise and whether the Government have any designs on that; international work, which is the kind of thing Minister Thomas-Symonds is doing; and that particular GB-Northern Ireland relationship that is so delicate and important now after Brexit? It is quite a lot to give one person.

Tidiness is tempting. I am not against tidiness, but there is a danger we are kidding ourselves that if we put it all in one place that is an answer to arrangements that by their definition—this is the most British thing in the world—have grown up and been put where they are because of different agreements, products of history, decisions of individual Prime Ministers and so on. There is an argument either way, but personally I do not necessarily think that the tidiness of putting it all with one person is as easy an answer as it might look.

Lord Falconer of Thoroton: You are obviously right when you say that no one person in government can be responsible for all the five things that Baroness Drake listed. Can somebody in government be responsible for thinking about whether particular things offend against the constitution? For example, if you had a propriety and constitution group in the Cabinet Office, which apparently you do, and if every Bill or policy proposal that came through had somebody asking themselves, "Does this offend against some sort of constitutional principle?", you would not be thinking, "Well, I'm responsible for local government, devolved government, rule of law, blah blah blah. I only have to ask myself, 'Is there any constitutional aspect to this that I should be worried about?'" Is that possible?

Pat McFadden MP: I suppose it might be. Again, if I take as a practical example the Sewel convention, I have a responsibility to think about the Sewel convention because I am the Minister for Intergovernmental Relations. Does that mean the Secretary of State for Scotland does not or the Secretary of State for Northern Ireland does not?

Lord Falconer of Thoroton: No, of course he has to think about it.

Pat McFadden MP: So when I am thinking about the Sewel convention I am very careful to speak to the Secretary of State for Scotland and the Secretary of State for Northern Ireland. That is in the nature of Cabinet government. I think that is a good thing.

We have our formal things—we have a Cabinet committee—but the informal, having the constitutional awareness to think, "This is important. I'd better speak to the Secretary of State for Scotland, Northern Ireland or whatever", is an important part of the job. That is the reality of how this kind of thing works. Darren, do you want to say something about the responsibilities of your group?

Darren Tierney: Sure. We provide four centres of expertise for Ministers, the Cabinet and Permanent Secretaries on the constitution, on devolution, on standards and propriety, and on the relationship with the Palace. The thing I am always heartened by is that we get an awful lot of incoming requests for advice from Ministers, special advisers and civil servants. That suggests to me that with the diffuse nature of it people are thinking about those issues and are asking questions of us. We advise them on each of those four centres. I think it works.

Lord Falconer of Thoroton: Which Minister do you report to? Mr McFadden?

Darren Tierney: I report to the Chancellor of the Duchy of Lancaster. Yes.

Q37 **The Chair:** One of the underlying concerns is that we do not have a codified constitution. We have seen that uncodified constitution put under considerable stress in the last six years. Even though individual Ministers carry authority, is there some systemic check built in at some point

where these issues become significant before they crystallise into a problem? I think that is the concern we have.

Pat McFadden MP: There are conventions that are very much part of British life. We have a convention, for example, of parliamentary privilege as part of our constitution. It is written in statute. It is written in the Bill of Rights. There are other parts of it in different Bills. We have a Scottish Parliament because we legislated to establish a Scottish Parliament, and so on.

It is in legislation, but I am not convinced, given British history and British decision-making. All these things are products of history and politics, over hundreds of years. It is a bit like Lord Falconer's question about a single person; that a single document would necessarily make a huge difference. We would probably find that trying to codify the things that we understand, such as parliamentary privilege or the separation of powers between Parliament and the courts and so on, might be a more difficult exercise than we think.

Lord Falconer of Thoroton: In the last Government things went to the bad in relation to the devolved Assemblies and Parliaments. That had some constitutional impact because it made relations bad. Would it have made a difference, do you think, if there had been something in the centre to drive better relations and say, "Look, this is something we've really got to work at?"—somebody recognising that a constitutional problem was growing there, which does not necessarily arise on one individual piece of legislation or one particular decision? You took the Sewel convention as an example. I completely understand what you are saying about that, but in fact in the post-Brexit period there was a run of ignoring the Sewel convention for a variety of reasons.

I understand what you are saying about the fact that it would be for the territorial Ministers to think about that and for the individual Ministers when dealing with individual bits of legislation, but would it have helped to have had a big figure in the Cabinet Office saying, "Look, I'm responsible overall for these relationships, which transcend a whole range of departments, and this is a good thing"?

Pat McFadden MP: I think you did have a big figure in the Cabinet Office for at least part of that time.

Lord Falconer of Thoroton: Michael Gove?

Pat McFadden MP: Yes.

Lord Falconer of Thoroton: And it did not work.

Pat McFadden MP: You said it went bad with regard to intergovernmental relations in recent years. I think that is true. You could also say it got into a rocky place in terms of comments about the courts. We had the Prorogation of Parliament. There were a few areas where things got more difficult and rockier.

A single person? I am being careful. I do not want to come here and be really partisan about this, but I think that was a product of the politicians at the time, the attitudes they had and the decisions that they were taking. For example, if I go to the current law officers, they have been very clear since we took office that this is a Government who believe in the rule of law and will put respect for international law into the Ministerial Code. That was the law officers, quite rightly and understandably in my view, putting down a marker from the very moment the Government got elected that we were not going to get into some of the arguments that had taken place in recent years.

If I want to be uber fair, in any relationship—I talked about trying to have a normal relationship with the devolved Governments—that will obviously have to work at both ends of the table. If there are people involved for whom grievance and division is their meat and drink every day, it is quite difficult to do that.

Lord Falconer of Thoroton: You gave an excellent list just then of all the sorts of constitutional problems that arose under the last Government. It was not just devolution; it was also Prorogation. I do not know what advice the law officers gave, but the law officers might have given advice because the Court of Appeal said, "This is okay legally", but is that all right constitutionally? In fact, the Rwanda Bill might have been okay legally, if it had passed, but it was constitutionally quite offensive. With that line of issues previously, maybe it might have helped to have somebody at the centre saying, "Hold on. Whatever the legality is, this is unconstitutional".

Pat McFadden MP: Yes, but are you going to say that you need a big figure to avoid that? You had big figures. We might have been in different parties, but you had big figures and they took the decisions or found themselves in a position, however you might want to put it, where those things were going wrong.

Q38 **Baroness Andrews:** In a way the debate coalesced around a minor but very important political point, which was the common frameworks process. That got lost across government, even though Michael Gove was technically in charge in the Department for Levelling Up, Housing and Communities. The Common Frameworks Scrutiny Committee recommended very strongly several times that there should be a Cabinet Office responsibility taking that on. Could you tell us, Minister, whether common frameworks now sit explicitly with you in the Cabinet Office?

Pat McFadden MP: Not just with me. It is a big issue, because it relates to the internal market Act and how that operates. The committee will be aware that when we were members of the European Union, we had to adhere to a set of single market rules wherever we were in the UK. When you come out of the European Union it poses the question, "How do you ensure common standards for trading in goods and services?" Hence the common frameworks and the internal market Act.

The way the internal market Act has operated has produced a lot of bad feeling in recent years. I believe there is a need to ensure free movement of goods and services and a common regulatory understanding throughout the UK. The exam question is, "How do you do that while respecting the devolution settlement?" My own preference would be to revive the common frameworks and see if we could do much more through that process, but there may still be occasions when a proposal comes forward that will be so disruptive to internal trade that it becomes quite a difficult conversation. You should try to have good will, but I do not think you can say that will never happen. I understand the need for some mechanism to ensure continuity of trade.

Q39 Lord Foulkes of Cumnock: You have covered this question in the discussion. I just want to pick up the point about having one person responsible for oversight and co-ordination. You mentioned, Mr McFadden, that individual Ministers have individual responsibility for different aspects. Then you said the Prime Minister is theoretically responsible for oversight, but he is far too busy. Do you not think there is an argument for having one person in the Cabinet responsible for not the individual parts of it but oversight and co-ordination of all aspects of the constitution?

Pat McFadden MP: As I said, most of it, or a significant body of it, is in the Cabinet Office now. Am I, for example, going to supplant the Lord Chancellor on her oversight of the judiciary and the legal system? I think she is probably better placed to do that than me, personally. I do not know if you want to gather everything in Baroness Drake's list of five in one place. If I go through that list of five, most of it is in the Cabinet Office now.

Q40 Lord Foulkes of Cumnock: You mentioned that Michael Gove moved from one department to the other and the responsibility moved with him. That highlights one of my theories that personalities are even more important in politics than policies. Can I suggest, although maybe not de jure but de facto, that you are, Mr McFadden, the person responsible for oversight and co-ordination?

Pat McFadden MP: I feel that I am responsible for quite a lot of oversight and co-ordination across the Government, yes. As I say, most of it is in the Cabinet Office. By the way, with regard to the thing about responsibilities following personnel, I can understand how that happens. I am not saying it is a terrible thing, but sometimes if the personnel change you might look at it again and think, "Maybe that doesn't make as much sense as it did'. I think personnel matter and they do make a difference. He cared a lot about the union and the constitution, so I can understand why the Prime Minister at the time made that decision.

Lord Foulkes of Cumnock: Good. You have answered my question. Thank you.

Q41 Lord Beith: I think we can be brief on this point, Mr McFadden. You talked about the Union and Constitution Cabinet committee. It is

significant that it is a Cabinet committee whereas previously it was a sub-committee. What shapes its agenda? How significant is it in the processes of government? How far should we regard it as doing some of the things we have been talking about in terms of assessing constitutional significance?

Pat McFadden MP: I think you should see it as important. We see it as important. It is an important committee. It brings together the Cabinet Office, the territorial Secretaries of State, the law officers and the business managers in the Lords and the Commons. The key elements that we have been discussing today are all sitting around that table.

Of course, its agenda will change over time as it deals with different issues. At the top of its agenda are intergovernmental relations and some of the issues that we have touched on today. Going back to the question that Baroness Andrews asked a few minutes ago, how do you deal with issues like that, what are the essential principles and what is the sort of framework that we want to do it through? This is the formal body through which that kind of thing will be decided. I think you should treat it as important.

In the reality of how government works outside that—I think this is a good thing—because it is a Cabinet and because you have those Ministers sitting round the Cabinet table together, there will also be informal ways in which things are checked. I think I gave an example earlier. If I want to check something with the Secretary of State for Scotland and just get a sense check of it, I would not necessarily need a Cabinet committee meeting to do that. That is in the nature of Cabinet government.

Lord Beith: Does it expect to do dispute resolution, where one department says, “We want to do this and we don’t think it is constitutionally offensive”?

Pat McFadden MP: Yes. It is the role of any Cabinet committee to do that. Ideally, you reach a decision there. As with all these things, if you cannot get agreement round the table, it goes upstairs to the Prime Minister, but ideally a Cabinet committee should reach a resolution by itself.

Lord Beith: Do you see it as a busy committee with a heavy agenda?

Pat McFadden MP: It should have a good rhythm of work. I cannot make promises on how often anything will meet, but it is an important committee for us. It is really valuable to have that set of people around one table discussing these things.

Lord Beith: Is the threat of going to it significant if a department is heading in a constitutionally worrying direction?

Pat McFadden MP: It is a privilege and an opportunity to go to the meeting.

Lord Beith: I will give you an example of what I am talking about. If a

department says, "We've got a Bill and we think we need a skeleton Bill for this without incorporating too much of the policy in the Bill, so we'll use lots of delegated legislation", are there others in the system who are going to say, "That's a bad thing constitutionally", or, "When we tried to do that we were stopped"?

Pat McFadden MP: I do not know whether it will work like that. Before you get to a Bill, you usually have a proposal about what the Bill is for and what it is trying to do. You try to agree policy on the proposal. Sometimes you can do those things by write-around, if it is not very controversial. Major things, where you want proper, serious discussion around the table, will be taken to a Cabinet committee, which should make the decision.

The Chair: That was mechanisms. We move to processes, with Baroness Finn.

Q42 **Baroness Finn:** Thank you, and good morning. This question is about constitutional issues and how they are considered during the policy and decision-making processes. The distinction there is that, while constitutional matters are clearly considered when the policy involves a change to the constitution, they can be more overlooked or a bit more ad hoc in the development of other policy. Would you describe as fair that the way in which constitutional concerns are raised is ad hoc? Does the consideration of the constitution need to be more formally embedded into the policy and decision-making process?

Pat McFadden MP: I will bring in Minister Thomas-Symonds on this. If you pose the question that ad hoc sounds bad and more formal sounds good, you will always get to one answer. Again, in the British system these things are a product of our history.

Awareness is important. It is easy to call for. There is a phrase I have heard in Whitehall that people use almost as an internal self-criticism: devolve and forget. I do not think we should devolve and forget, because there has to be a live and ongoing relationship. There are probably Ministers over the course of history in both parties who have not always fully had their mind on that. That is something we have to guard against, because it is a really important relationship. I will bring in Nick.

Nick Thomas-Symonds MP: In relation to what you have said, Baroness Finn, there are clearly formal processes that exist. There is the Union and Constitution Cabinet committee, which the Chancellor of the Duchy has already referred to. In addition, there is the Parliamentary Business and Legislation Committee—or the PBL, as we call it. Around the table for that committee, you will obviously find the territorial Secretaries of State for Scotland, Wales and Northern Ireland. I am there too. The memberships of those committees are public knowledge. They can be viewed. I am there in my role as Minister for the Constitution, so that is very much there.

There is the general collective decision-making process of government, which obviously includes advice from the law officers as well. There is an apparatus in the system specifically to raise constitutional matters and concerns. I think Baroness Drake was drawing that distinction in an earlier question. There is a distinction between a constitutional reform agenda and what I would call constitutional stewardship. Constitutional stewardship is very much part of what you would be discussing at those committees: the implications for our existing constitutional arrangements, as well as a wider constitutional reform agenda.

That formality is embedded in the system. As the Chancellor of the Duchy said, it is very much the case that the constitution has to be part of a mindset across policy-making, as well as informally when Ministers see or are engaged with particular issues that have constitutional implications. That softer side—the informal side—is hugely important, as well as the formal processes that exist.

Baroness Finn: Thank you. I raise it and am slightly pushing on it, because Alex Thomas, who was principal private secretary to Jeremy Heywood when he was Cabinet Secretary, was very clear about the importance of the role of the Cabinet Secretary because things were raised to the Cabinet Secretary in bringing those issues to the Prime Minister. Often, they tend to emerge because a Minister or a law officer has a concern, and it is outside the frameworks that are being discussed. That is not necessarily a bad thing.

Nick Thomas-Symonds MP: What that also highlights, when we are talking about constitutional responsibilities—I was answering on the basis of the ministerial level—is that it is obviously the case that the Cabinet Secretary has a hugely important position in all this, both in the role of Cabinet Secretary and head of the home Civil Service. You are entirely right to highlight the crucial nature of that role in terms of constitutional implications.

The Chair: We move to a slightly more strategic view of the constitution. There are some quite hot issues around this at the moment.

Q43 **Lord Strathclyde:** First, thank you all very much for coming along. It is really helpful to have all of you here today. This is about strategic thinking, but it is also about policy development. The question I am really after, which I do not think will surprise you, is that one of the Bills coming forward this year is of course on parliamentary reform. It is deeply constitutional because it affects the Chamber of the House of Lords. There does not seem to have been any great discussion about it, or the cross-party consensus building or working through various cross-party organisations that would have been possible. It looks and feels—I am talking particularly about the House of Lords reform Bill—particularly partisan, since 95% of the people due to be expelled from the House of Lords are not supporters of the Labour Party. Do you think there is any credibility in that? Do you think it is all right for a new Government simply to come in and get rid of its opponents in one of the Houses?

Leading on from that, of course, it is not just getting rid of people; it is creating a House where the appointment system is entirely in the hands of the Prime Minister. Progressives over the last 20 or 30 years have been very keen on an elected House. Has the Labour Party given up entirely on looking at the case for an elected House?

Pat McFadden MP: I will let Minister Thomas-Symonds deal with the bulk of this. The only thing I would say is that I think it is okay for a party to enact its manifesto if it wins an election. I leave the rest to Minister Thomas-Symonds.

Nick Thomas-Symonds MP: To pick it up, Lord Strathclyde, in terms of the House of Lords Reform Bill that I think will be before your Lordships next month, that is clearly in our manifesto as an immediate first step. It is there as a step on its own. I would argue, first, that it is in the manifesto and, secondly, it is within the Salisbury convention as well, and that is how it was intended.

To the point about Hereditary Peers, no, it does not have the motivation that you suggest, nor is it in any way personal. I have worked in various roles. I have had both shadow roles, and indeed in government, with hereditary Peers. It is not personal in any sense. I have found them extremely good to work with. It is to do with a principle. It is a principle that places in our legislature should not be reserved on the basis of an accident of birth. It is about a principle and nothing to do with personalities or indeed wider partisanship.

To your second point about trying to build consensus on reform, that is precisely why there is a staged approach in the manifesto. The manifesto sets out a number of steps, the end destination of which is described as an alternative second Chamber that is more representative of the nations and the regions. There is also a series of steps in there around the second stage of the reform looking at things like participation requirements, for example. Of course, it would be great if we could build consensus around that second stage. It is something that, as a student of history, seems to me to have eluded previous attempts at reform. It has not reached that happy state of agreement across parties or, indeed, across Houses. I suggest that the first step is clearly within the manifesto, and I would argue that there is an electoral mandate for it.

Lord Strathclyde: I completely understand the manifesto point, but do you think, therefore, that it is all right to change fundamentally the constitution simply on a manifesto pledge? There must be some other hurdle on it. Would that not be right?

Nick Thomas-Symonds MP: That is not the case in our constitutional arrangements, is it? If you look at the United States constitution, for example, there is a higher bar for amending the constitution. That is not the case in Britain. If you look at the 1911 Parliament Act, for example, what happened in the end was that there were two general elections in 1910, which is what preceded it. In fact, the Salisbury convention came about, as you know, after the 1945 Labour victory. Similarly, the 1999

reforms came about again after an election victory. I would suggest, in fact, that where there have been previous reforms, they have come about on the basis of an electoral mandate. I would argue that this reform is squarely in that tradition.

Q44 **The Chair:** To bring it back to the issues we are interested in, and taking the previous question on mechanisms and safeguarding, where did the process of identifying that proceeding with the House of Lords Bill on hereditary Peers, taken in the context of your known wider policy issues, sit with your moving forward on that Bill without prejudicing the integrity of the constitution as a whole?

Nick Thomas-Symonds MP: What we sought to do in policy formulation in opposition was not to fall into the trap of previous sets of reform, which is essentially to pit the perfect as the enemy of the good. Everybody is perfect is different as well, by the way, which has been the problem in this particular sphere. To Lord Strathclyde's earlier point, the reason it is step by step is precisely to see if we can build more careful consensus with regard to reform.

On the point about the hereditary principle, to me that is about a fundamental point of our legislature. It is the fundamental point of not having places that are reserved as an accident of birth. In 2024, that is something for which we have an electoral mandate, but it is also an important principle to embed. It seems ridiculous in some ways that we are nearing the end of the first quarter of the 21st century and we need to do that, but that is just a reality of where we are.

Q45 **Baroness Goldie:** Gentlemen, good morning. Mr McFadden, you said this is a manifesto commitment. I do not dispute that. Mr Nick Thomas-Symonds, you said that it is compliant with the Salisbury convention. What I am less clear about is this: I do not in any way dispute the right of a Government to carry out their manifesto, but there is a consequence, and I would argue that for this Chamber to remain functional in the short term there is a constitutional consequence.

I would like to establish from the three of you, or one of you or two of you, whether it is right to let the undeniable constitutional consequence of removing unilaterally a significant group of Members of this House without having regard to how you constitutionally protect the ability of this House to go on doing its job of scrutiny and calling to account of the Government.

Nick Thomas-Symonds MP: I do not think those two things are in conflict. The more measured, if I may say as well, great expertise in Lords scrutiny will very much continue. In terms of this particular reform around the removal of the hereditary Peers, I do not agree that it puts that at risk. Certainly, though, back to Lord Strathclyde's point, I pay tribute and thank hereditary Peers for the work that they have done. As I repeat, it is not personal or in any way a comment on the work that individual hereditary Peers have contributed to our upper Chamber. For me, there is something fundamental about the principle. I want young people who grow up in my constituency and all parts of the land to aspire

to be members of our legislature and to play a role in our law-making. The principle you send out by saying that we are reserving spaces simply on the basis of the family that you are born into is wrong in a modern legislature.

Baroness Goldie: I do not dispute that. What I am asking for clarification on is this. There are consequences to doing it. Whatever the entitlement of the Government to do it, there are consequences for this House. You said earlier, Mr Thomas-Symonds, that the rest of the reform needs careful consideration, but actually by the very consequence of taking the action that the Government are taking, there is a result, there is a reaction, where a significant number of Members of this House who are proven contributors, as is obvious from looking at the record of what happens in this place, go; they disappear. Would it not be sensible, if we really respect the constitution, to have some regard to how you manage the transition from losing all those people to getting the House back to some form of functionality, because, as the noble Lord Strathclyde said, we are going to switch to a lot of power now devolving into the hands of the Prime Minister?

Nick Thomas-Symonds MP: It is the start of a process. This is the first step in a process. I do not deny your first point. Of course, there is a consequence to taking a first step in the process. You are absolutely right. There is a reason for setting it out in the step-by-step way that we have done rather than coming in with a whole big bang reform, which, by the way, has been attempted before. The late 1960s is a very good example of that, where it all failed and nothing happened in the end, and that is a risk that we are very conscious of. Seeking to do what we are doing, which is to try to have a more consensual process by doing it step by step and not in one go, is precisely so that we can take into account and listen to the kind of concerns that, Baroness Goldie, you are referring to.

Pat McFadden MP: Baroness Goldie is right to take us from the realm of the constitution to physics by saying that for every action there is a reaction; there is a consequence. Lest the noble Lords around the table get too alarmed, Lord Strathclyde knows far better than me because he was very involved, however many years ago it was, when several hundred hereditary Peers were removed, yet the House of Lords managed to continue to do its job as a revising Chamber putting forward very well-considered amendments to legislation and contributing to our national life in the way that it has done since that reform was made. Where I agree with Mr Thomas-Symonds is to oppose the suggestion that if we proceed with our legislation to remove the hereditary Peers, somehow the House of Lords cannot do its job anymore. I think it can, and I have every confidence that it will.

The Chair: The Constitution Committee sees its role, before it takes any view, as to draw out the issues and debate them whatever people's differing views are. We started with whether, in coming to the decision on the House of Lords (Hereditary Peers) Bill, the Government had gone

through the process and satisfied themselves that the integrity of the UK constitution was not prejudiced. There is also the issue of consequences, which is something we will have to reflect on when we write our report on the Bill. One of the issues, just reflecting on the debate—I am not saying what the committee might say—is losing key people from posts and the working of the House, but whether those are actually constitutional issues we will have to consider later.

Q46 **Lord Foulkes of Cumnock:** I have one very quick question. Will you confirm that it would be perfectly possible for the Conservative Party to nominate people who lose their hereditary peerage as life Peers?

Pat McFadden MP: Yes, of course.

Lord Foulkes of Cumnock: Thank you.

The Chair: We move on to the constitutional knowledge of Ministers and officials.

Q47 **Baroness Andrews:** Good morning, gentlemen. Thank you. I want to reflect on a couple of things that have been said that impact on the question. Minister McFadden, you talk about constitutional responsibility being shared across government by Ministers. In fact, we have heard Mr Tierney say how often and how popular his constitutional unit is as a source of advice in government. It would be interesting to know more about that. It begs the question that is embedded in the bigger question of how much we should expect Ministers to know when they take up their post, not least because they change frequently. Are you content with the extent of knowledge that Ministers already have about the constitution, especially if they are expected to exercise it in the way that you have suggested? If not, is it a counsel of perfection, as there is no such thing as perfect knowledge, or a perfect definition of the constitution? Is there any form of training or induction that would be better than what we have at the moment?

Pat McFadden MP: It is a really good question. I am very conscious, given the longevity of the building that we are in and the institutions that we are talking about, that this is a tiny amount of time. I have had about 30 years' involvement in these issues and, hopefully, learned something during that period. Would I ever say that I did not have more to learn about these things? The answer would be no.

Going to the real world, we are a new Government, and because we have been out of power for a long time most of the Ministers serving in the Government did not serve in the last Government. That is just through the passage of time. There are only a few old stagers like me who did both. In any new set of Ministers, obviously people are going to learn, and that is the reality of life. Anyone involved in politics understands the main constitutional principles in the UK. We have referred to some of them today. They understand principles such as parliamentary sovereignty and parliamentary privilege. They understand the separation of powers between the judiciary and the legislature. That is part of what taking part in public life in the UK entails. We should all be open to

learning more and more, whether we are old stagers or whether we are new Ministers.

The honest answer to your question is this. Does everybody have perfect knowledge? Of course they do not, but involvement in public life in the UK teaches all of us what the major constitutional principles are. Perhaps it is when we forget them that we get into some of the rocky troubles that we referred to earlier in this session that happened in recent years.

Baroness Andrews: In 2021, the Cabinet Office and the Civil Service published a joint declaration on government reform recommending a training programme for Ministers. I wonder what happened to that. Is it simply a non-starter for either practical or pragmatic reasons?

Pat McFadden MP: We have talked a lot about definitions this morning. How do you define constitution? How you define strategic is another. How do you define training? I took it upon myself before the election to try to speak to people in several areas who I thought had been more involved with government in recent years than I had because we had been in opposition for a long time. Some of them were kind enough to speak to me about how things were looking, how things were working and so on. Is that training or is it what you might call prudent preparation? It makes sense to do that. We have good organisations such as the Institute for Government that offer their services to Ministers. You have had evidence from the Institute for Government as part of this inquiry. It does a good job, and it is there to give advice to all the political parties. Is that training? Is it good advice? It depends on your definition. Certainly, I think curiosity is an essential quality of political leadership. It is a duty of political leaders to be curious and to keep learning no matter what age they are.

Q48 **Baroness Andrews:** The Institute for Government recommended a centre for constitutional expertise in the Cabinet Office. We have Mr Tierney here today with his propriety and constitution group. Does that in any way fulfil the function of what the IfG was imagining? If I was a Minister presented with a Bill that had a whole load of delegated powers in it, would I come to you and say, "Hang on a minute, I think there's something constitutionally a bit dodgy about this"? In fact, where would I go?

Darren Tierney: I think we fulfil that function of the IfG. I have a team of people who are deeply expert in constitutional issues. The thing the IfG was after was somehow to separate that team and make it a distinct function of the Civil Service, but I think that would be wrong. I do not think you should have distinct elements of the Civil Service, otherwise you start getting into questions about independence and separation, which would be a mistake in our system. On your question about where people seek expertise, if you are a Bill Minister, your first port of call is your department and the law officers who will give you full advice on managing legislation through. If people then want further advice from the centre, of course, the team and I are available to all Ministers for that.

Baroness Andrews: Thank you.

Q49 **Lord Strathclyde:** I do not think I have anything to add to that. Both Lady Andrews and the Chancellor of the Duchy answered it extremely well. Perhaps I can just put a gloss on it. Do you have a sense that in your time as a parliamentarian dealing with your Ministers and with parliamentarians there is slightly reduced knowledge of some of the basics of constitutional relations?

Pat McFadden MP: It is a danger of the passage of time that we view the world through that lens. I hope it is okay to say this. As we get a bit older, it is always tempting to think that. On a more serious level, there is a constant job to be done, particularly on the devolution front, to make sure that Ministers who have not had contact or experience with devolved Governments understand the settlement and what we legislated for in different ways about 20 years ago and what the powers of these bodies are. It is not always the case that a new Minister will fully understand that. It is a constant job to do.

Q50 **Lord Falconer of Thoroton:** Your lens, Mr McFadden, is that you were deeply personally involved in House of Lords reform, in the devolution settlement, and a whole range of other constitutional reforms between 1997 and 2001, so you have particular experience and expertise in this job.

Pat McFadden MP: I had some involvement. I was not quite as involved as Lord Strathclyde was in some of it. I was a staff member.

Lord Falconer of Thoroton: That depends on which way you look at it.

Pat McFadden MP: I have had a lot of involvement in these things either as a staff member or as a politician over the years. I hope that is of some help and, given where I have ended up, of some use in dealing with these issues.

Lord Falconer of Thoroton: Can I go back to Mr Tierney's group? Did it exist before the general election in July?

Darren Tierney: It did, yes.

Lord Falconer of Thoroton: You are saying it is sort of a centre for constitutional expertise. How long have you headed it?

Darren Tierney: I have been leading the group for four years. The constitution bit of it has been mine for about two.

Lord Falconer of Thoroton: I do not want to ask about individual pieces of advice, but in the period prior to July 2024 did the group ever say in relation to a proposed decision or Act of Parliament or Bill, "Don't do it because it's unconstitutional"?

Darren Tierney: We certainly gave full advice on constitutional implications of the sorts of things you might have in your mind.

Lord Falconer of Thoroton: Including saying, “Do not do something”.

Darren Tierney: We pointed out the constitutional implications. It is for Ministers to decide.

Lord Falconer of Thoroton: Was your advice followed?

Darren Tierney: I will not get into that.

Lord Falconer of Thoroton: All right. Fair enough. Very wise.

Q51 **The Chair:** Building on that, when we took evidence previously, the issue was raised of the strength of the Cabinet Secretary in appreciating constitutional issues both in discharging his or her own role and in the kind of ethos they are handing down to their Permanent Secretaries, assisting Ministers in being alert. Has that been a focus? Were there rearrangements? Would you like to reflect on that view?

Darren Tierney: The current Cabinet Secretary is a constitutional historian, so he is well-steeped in the constitution. All Cabinet Secretaries are supported by my team. They also have access to the Treasury Solicitor, the law officers and the Permanent Secretaries of the department, so they mirror the set-up that the CDL talked about. Any Cabinet Secretary will get full advice on constitutional implications to enable him or her to advise the Prime Minister and the Cabinet.

The Chair: It is not only knowledge; it is culture and disposition. We move on to guiding decision-making on constitutional issues.

Q52 **Lord Anderson of Ipswich:** Mr McFadden, you warned us of the difficulties of codification in certain sensitive areas. If I may say so, I entirely agree. There are risks also in what our predecessor on this committee and the Cabinet Secretary’s former professor, Lord Hennessy, referred to as the “good chaps” theory of government. There are many other countries with constitutions on the Westminster model that have put many aspects of their constitutions if not in a constitutional document then at least in an Act of Parliament. Are there any principles of our constitution that might usefully be clarified, strengthened or at least less easily pulled out of shape if they were put into legislation? May I give three examples of what I am thinking about to see what your reaction is?

The first would be putting the Civil Service on a statutory basis as recommended by the Institute for Government in 2022. The second would be legislation as proposed by the Hansard Society to ensure that Parliament can calibrate the level of scrutiny to the content of a statutory instrument. The issue of skeleton Bills and excessive delegated powers was, as you know, of great concern to this House during the last Government. Otherwise sober committees were producing reports with titles like *Democracy Denied?* and *Government by Diktat*. While it would be nice to think that that was simply a bad dream now safely in the past, judging by the debates we will be having later today on the Product Regulation and Metrology Bill, those concerns might not be entirely in the past.

My third example would be legislation that would give statutory authority to what are sometimes known as the constitutional watchdogs, the Independent Adviser on Ministers' Interests, the Advisory Committee on Business Appointments and the Commissioner for Public Appointments, and indeed to elements of the codes that they apply or to your proposed integrity and ethics commission if that is intended as some sort of replacement for those three watchdogs. I do not know whether it is or not. On the third, I should declare an interest. I have a Private Member's Bill ready to go should there be any interest in it within government. My question of course is more general. Is there a place for legislation, and would those be appropriate areas for it?

Pat McFadden MP: Thank you. You have covered a lot of ground.

Lord Anderson of Ipswich: I only had one question.

Pat McFadden MP: I will try to pick up a little bit. To make a very serious point, when we run into trouble, as we did in recent years, the constitutional system asserts itself. We saw Baroness Hale's judgment during the last Parliament on some of the constitutional issues that were put into play.

Regarding the examples you gave, this is a bit off the top of my head as you were reading them out. On the Civil Service, would it make any difference to put it on a statutory basis? I can only say that since the election result and coming into office in July the Civil Service has stood up to the best of British traditions, which is to be there for Governments of either colour, to facilitate the transition from one to another and to serve both equally in the public interest. The Civil Service has done that with flying colours since we came into office. We take that for granted in the British system, but the peaceful transition with a permanent Civil Service is something to be really valued as we look around the world. I am not convinced that we need legislation to make that happen or to underpin it in some way.

On the scrutiny of statutory instruments, I saw a lot of this in the last Parliament when we had an awful lot of post-Brexit legislation that was very complicated which was being put through. You would have a different SI because the first one had not been drafted quite properly and you would have to revise it and all of that. Looking at that process as a whole, it certainly was not a perfect example of parliamentary scrutiny. I do not think it always comes down to time difference between secondary and primary legislation; I have seen primary legislation rushed through without much discussion either. The form of the legislation does not always equal the level of scrutiny that it is subject to. To think like that would be a mistake. It has been imperfect. If you legislated for it, I do not know whether that would improve it, because the one thing you cannot produce more of is time, and it is often a matter of how to squeeze the amount of parliamentary time. Our legislature sits quite a lot, and it rightly should, and it takes its legislative job very seriously.

On the independent adviser, Commissioner for Public Appointments and the ethics and integrity commission, I am going to let Mr Thomas-Symonds answer more. This is an area we are taking seriously. We have manifesto commitments there, too, and we are doing work to take them forward. I will let the Minister update you.

Nick Thomas-Symonds MP: I will pick up a couple of points. To your general point, which I think is about writing down in statute, essentially, while of course, as I said in previous answers, there is no codified constitution, some things are already written down. If you wanted to see the relationship between the House of Commons and the House of Lords, you would obviously start with the Parliament Act 1911. It was amended in 1949. You have a particular position for money Bills. You have provision if the Commons tried to extend the life of a Parliament. That original 1911 Parliament Act was about two years and three Sessions of Parliament, which you could have as the structured delay, but that was changed with the 1949 Act. There are some things that are already written down.

I will come to the ethics and integrity commission in a moment because I think it is important. What we have inherited—it is the nature of our polity—are some things that have ended up on a statutory footing, some things that are written in law and some things that are not. As the Chancellor of the Duchy said, I do not think it is necessarily indicative of how well that particular part of the constitution works as to whether it is in statute or not, although I completely understand the merit of the argument that you are making.

You mentioned three bodies. There are actually quite a few more. There are: the Committee on Standards in Public Life; the Civil Service Commission; ACOBA; the Office of the Registrar of Consultant Lobbyists; the Commissioner for Public Appointments; the House of Lords Appointments Commission; and the Prime Minister's independent adviser. I have just named seven individuals or bodies within the ethics and integrity landscape.

The ethics and integrity commission proposal is trying to create coherence in that set of structures, perhaps the idea of a one-stop shop. I have said to all the chairs of those various bodies that it is not an attempt in any way to lose the very significant experience and expertise that we have there—far from it. I want the chairs to be able to make a contribution as to the form that the ethics and integrity commission should take. It is about trying to give a sense of coherence to that landscape. Nor am I saying that you could draw the conclusion that bits of it, because they are not on a statutory footing, do not necessarily work well. The Chancellor of the Duchy has given a very good example of the Civil Service and the transition that has been managed, which we have, at very close quarters, obviously seen in action both prior to the general election and since. I shall look with interest at your Private Member's Bill.

Q53 Lord Anderson of Ipswich: Perhaps. Thank you, both. I take from your responses the message that you are not planning legislation in any of

those three areas.

You will have seen, of course, that the Attorney-General in his admirable Bingham Lecture last month said that “excessive reliance on delegated powers, Henry VIII clauses or skeleton legislation upsets the proper balance between Parliament and the executive ... In my view, the new Government offers opportunity for a reset in the way that Government thinks about these issues. This means, in particular, a much sharper focus on whether taking delegated powers is justified in a given case, and more careful consideration of appropriate safeguards”. What in practice did he mean?

Pat McFadden MP: I think he meant do not use too much of it. I do not have the full passage in front of me. It was an excellent lecture. If you have it there, there is a bit somewhere in the lecture where he says, “But sometimes this is needed”, or words to that effect. He is saying, “Don’t use this too much. Don’t make it a default, easy, off-the-shelf way of legislating, but there are times when you will need to use delegated powers”. It seems to me he is absolutely right.

Lord Anderson of Ipswich: If he is seeking to put friction into the system, can you tell me what that friction will look like and how it will be any different from how it was before July?

Pat McFadden MP: It is an ongoing debate, is it not, when people get very exercised if a Bill contains too many of those powers? I think he is setting out on behalf of the Cabinet that it is not something to be used too often. There is no exact science about how you would define “too often”, but he is right to do that, and he reminds us that for full parliamentary scrutiny we cannot leave too much to delegated powers.

Lord Falconer of Thoroton: It is not just the implication. I think the Attorney-General was saying that it had been done too much in the previous 14 years, so presumably we will see less of it in the future.

Pat McFadden MP: That is his exhortation to us all.

The Chair: Going back to the speech by the Attorney-General, I quoted it at the recent Interparliamentary Forum in Northern Ireland, and I think it went down very well. One of the issues is that, although the speech clearly says there has to be clear justification for wanting those powers, the consistent weakness is that the justification is weak, so very often we are sending letters saying, “This isn’t a justification”, or, “You haven’t set out your reasoning”. If that is to be the exemption, there needs to be a change in how people approach giving that justification, because it is still quite weak. Writing, “We don’t know what we don’t know, so we’re going to bank all these powers”, is not really a justification.

Pat McFadden MP: I hesitate to speak too much for the Attorney-General, who is well capable of speaking for himself, but you would ultimately have to ask him how you define justification. There are times when it is appropriate, when it is something very detailed and might

evolve over time. I can see that. It is a very long-running debate, is it not?

Q54 Baroness Goldie: Mr McFadden, on this issue you have assuaged my concerns, but can I seek further clarification on one aspect beyond the specifics mentioned by the noble Lord Anderson? Do I infer that on using statute to guide executive decision and constitutional issues there is an instinctive wariness on that broad premise?

Pat McFadden MP: Can you tell me exactly what you mean by that? Sorry.

Baroness Goldie: Lord Anderson articulated a number of specific examples where some principles might be put into legislation, but I think I detected from what you were saying that, philosophically, there is actually what I would describe as a wariness about going down that road.

Pat McFadden MP: I was just responding to the examples. He asked if we thought we need an Act of Parliament to underpin the impartiality of the Civil Service. My instinctive reaction is that I do not think we do. I am sure there is a perfectly good debate to be had about it, but I think it has demonstrated in its changeover of government that it can and does act in an impartial and public service-minded manner. In response to the examples, no, but I do not want you to read too much into, "We never legislate for anything", because there are always debates about these things. We are legislating in other areas, as we have discussed this morning.

Baroness Goldie: Okay, thank you.

The Chair: We move now to the executive oversight arrangements for the Council of the Nations and Regions. Lord Thomas will open the questions on this.

Q55 Lord Thomas of Gresford: The Constitution Unit considered the Labour Party's manifesto prior to the general election and said of the council that it was not clear if it was intended to replace or sit alongside the existing Prime Minister and Heads of Devolved Governments Council, nor was it clear how those areas of England without a mayor would be represented. It has had its first meeting, and still nothing is clear. The question is: what is it for? What are the executive oversight arrangements for the council? How are you going to ensure that it effectively represents all areas of the United Kingdom?

Pat McFadden MP: It is a good set of questions. The Prime Minister was keen to create a proper high-level body that would involve the First Ministers, and in Northern Ireland the First and Deputy First Ministers, together with the Prime Minister himself. I attend and, depending on the subject matter, other Cabinet Ministers may attend as well. We also wanted to recognise the degree of devolution that had taken place in England in the last 20 years or so with the creation of directly elected metropolitan mayors such as the one in my Wolverhampton constituency—the Mayor of the West Midlands. We have had a Mayor of

London for a lot longer. They would be round the table, too, to discuss areas of common interest. That is what it is for.

There was some discussion of who is to be represented. I did some media interviews on the morning of the meeting that we had in Edinburgh about a month ago. We have not invited every local authority leader in the country. I do not think the metro mayors should be regarded as local authority leaders. The Mayor of the West Midlands represents 5 million people, which is not dissimilar to the population of Scotland—different powers but not dissimilar. Every part of England that does not have a directly elected mayor in the way that Manchester, the West Midlands or London currently do has been offered the chance to have one if they so wish. It slightly depends on the desire to have those kinds of mayors representing groups of local authorities around England as to who will be represented from England on that body.

Lord Thomas of Gresford: Representing for what purpose?

Pat McFadden MP: To discuss the issues of common interest in front of us. At the first meeting, the discussion was mainly about investment, and within investment particularly the energy field, where we are on the threshold of a lot of change in how we generate and distribute our energy and how we use it, which has the potential to create jobs all over the UK.

Lord Thomas of Gresford: If you are living in Cornwall, you are not represented at all.

Pat McFadden MP: The offer to somewhere like that is: do you want to have a collective mayor such as we have in other parts of the country? That is the structure of the body. It is potentially a very good idea. We want to make it work. I should say for completeness that at the meeting we did not just sit round a table all together like this. We did that, but there were also bilateral meetings between the Prime Minister and the individual First Ministers. There were collective meetings of the First Ministers as a whole with the Prime Minister and the full group. It is an opportunity on different levels to have a lot of good interaction on one day at one time.

One of the problems of such structures in the past—and we have a lot of them; you can produce a full list—as we have talked about a lot this morning, is whether you should write it all down or whether you should codify it. Probably if you were starting from scratch and you took all the different British-Irish bodies and Northern Ireland-GB bodies and the new body we have created, would you say this is the system we design? You might not, but each of them has been the result of particular political agreements—some of them from the Good Friday agreement. They are there for a reason. One of the challenges is to make sure that they have life after more than the first few meetings.

Lord Thomas of Gresford: You would agree that previous structures of this nature have not worked.

Pat McFadden MP: That is true in some cases.

Lord Thomas of Gresford: What is the difference now?

Pat McFadden MP: It is early days, so let us see how it pans out. One of the reasons we created the new body was that faith in the existing frequency, seniority, seriousness of agenda and so on in the intergovernmental structures that were there before had eroded and people did not really believe they were working properly.

Lord Thomas of Gresford: Will the voice of the devolved Governments be heard? I recall a former First Minister of Northern Ireland saying in a debate here that she used to attend the council and sat there and nobody asked her to contribute. She was there as a receiver of whatever Westminster thought appropriate.

Pat McFadden MP: That certainly was not the atmosphere or operation of the first meeting. This body has had one meeting. I believe all the First Ministers contributed. They all met with the Prime Minister. I said in one of my earlier answers that there are different political parties around that table and not everybody there is a political ally or sees the world in the same way. You would have to ask them, but I think I am right in saying that they would agree that in terms of engagement from this Prime Minister there has been a genuine step up since the election compared to what went before.

Lord Thomas of Gresford: You refer to matters of common interest. The thing that is in the headlines at the moment is agriculture. Will there be a meeting to discuss the effect of the Budget on farmers in Wales and Scotland and in the northern hills?

Pat McFadden MP: The next meeting is scheduled for the spring. You are right that that is in the news at the moment. Whether it will be definitely on the agenda for the meeting in the spring I cannot say because we have not got that far yet.

Q56 **Lord Thomas of Gresford:** I have one question that has been nagging me all morning, and it is slightly different. It is about legislative consent. If legislative consent is refused, who takes the decision to apply the Sewel convention? Is it the Minister in charge of a Bill, or does it go up for consultation with you or Mr Thomas-Symonds, or does it go to the Prime Minister? Who takes the decision that you are going ahead regardless?

Pat McFadden MP: You might not decide to go ahead regardless. It is a convention, first. It is not a statute. The convention says that the UK Government will not normally legislate in an area of devolved competence without the consent of the devolved Government. The convention operated quite well until 2018. It has been rockier since then, but it is a convention. Ultimately, it is possible for the UK Government to decide, should a legislative consent Motion not be passed, to legislate. They will not always decide to do that, but ultimately they can take that decision.

Lord Thomas of Gresford: Yes, but I am asking at what level that decision is taken. By the Minister in charge of the Bill? Does it come up higher to the Cabinet Office, or does it go to the Prime Minister?

Pat McFadden MP: I have not come across an example where we have done it in our four months so far. If it happened, I imagine it would not just be the Minister in charge of the Bill. I imagine business managers and other Ministers would be involved in the decision.

Lord Thomas of Gresford: Thank you.

The Chair: We will probably want to come back to the Sewel convention and intergovernmental relations. If we could finish off the Council of the Nations and Regions issue, I will take you back to that because how Sewel operates or delegated powers operate in relations with devolved Governments has been a significant issue for us, but let us stay with the Council of the Nations and Regions.

Baroness Goldie: Mr McFadden, you did not answer the question about the existing Prime Minister and Heads of Devolved Governments Council having been abolished.

Pat McFadden MP: We have three levels. This is the body where the Prime Minister will meet the First Ministers and Deputy First Minister in Northern Ireland. Underneath that, there is an interministerial council that is more subject-specific. This is the body where the First Ministers and the Prime Minister will meet.

Baroness Goldie: It superseded the former Prime Minister and Heads of Devolved Governments Council. Thank you.

Lord Foulkes of Cumnock: It is not really a council of the regions and nations at all, is it? It is a council of the regions and bits of England that have mayors. Rather than follow the Conservative policy of ad hoc devolution in England and trying to twist the arms of Cornwall and other rural areas to have mayors, would it not be much better to go back to what I think was the Labour Party policy of having regions of England and having a coherent and comprehensive set-up of regions in England?

Pat McFadden MP: First, it is not only Conservative policy to have mayors. We created the Mayor of London when we were in government, and I think it has been a great success. The question would be: who represents? There is a history, and it was not always a happy one, of trying to get regional government the last time my party was in power, and we found that support for the particular form that was tried at the time was not there. You are right to say that most of the other mayors came into being under the last Government, but I think it has been a good model, not just in London but in other parts of the country. You have seen powerful voices that have stood up well for their area, and it is something we can build on. One of the things that happens when you change power is that you ask yourself, "What worked and what didn't?" It is a good principle to say that if something has worked, even if it was

introduced by a party of a different colour, you do not always have to get rid of it, and maybe you can build on it.

Lord Foulkes of Cumnock: I am not saying that they do not work. In Andy Burnham, we have a very good example of a mayor who does a good job for his region. What I am saying is that it is not a council of the nations and regions. There are whole areas of England, particularly the rural areas, that are not represented, and I think it will be impossible to force them into having mayors. It just does not fit with them. If you remember, John Swinney came out of the meeting and said, "We are a country, not a county", and was a bit dismissive of the whole set-up. Is it not going to be difficult to get it to work?

Pat McFadden MP: It is important to understand that when this body meets, as I said in my earlier answer, it does not just meet with everybody around the table. It is important that when the body meets there is an opportunity for the First Minister of Scotland to have a bilateral meeting with the Prime Minister. That happened. It is not only the full council. Having everybody there means you can do that as well. I am sure that, if the issue merits it and the First Minister of Scotland or the First Minister of Wales needs to meet or speak to the Prime Minister outside those structures, that can happen; and it did happen on the day. They also met collectively with the Prime Minister. I do not think you should see it just as a flat layer of everybody present. It is important that there is the possibility of bilateral dialogue between the First Ministers of Scotland, Wales and Northern Ireland also to speak to the Prime Minister, and the structure facilitates that.

Lord Thomas of Gresford: You were sharing out £60 billion on this occasion of inward investment that you were expecting three days later. It is easy to see that such a meeting could be good for the people present, but not for the people who were not present.

Pat McFadden MP: We did not sit there and say the only people getting the investment are the people who have an elected mayor. It was not like that. We made a point that every part of the UK has an interest in inward investment of the kind that was announced both at the Council of the Nations and Regions and at the investment summit that took place a few days later.

The Chair: I noted that entry to attending the Council of the Nations and Regions is in part collectively moving towards electing a mayor. As you have just said, investment decisions are not driven solely by that body; there will be other considerations. The different units, regions or mayors will have different capacity and capability to take advantage of what may be the product of the discussions coming out of the council. How are you addressing differences in capacity and capability to utilise effectively greater devolution in those areas?

Pat McFadden MP: There is a devolution White Paper coming forward soon, led by the Deputy Prime Minister and her department, which will address devolution in England. They have different capacities and are at

different stages of development, and I think that is partly within the system. It is also true of the difference between Scotland, Wales and Northern Ireland; they do not have identical powers.

This is where I go back to where we started our discussion a couple of hours ago on uniformity and tidiness and the temptations of that. That is true, but we are not Germany and we are not the United States. We are the United Kingdom, and the constitutional structures, including the devolution structures that we are talking about, are a product of different decisions over time. I do not recoil in horror when someone says, "But the Scottish Parliament has different powers from the Welsh Senedd". Why is that the case? Because the two countries have different histories, and we legislated for a Scottish Parliament when the history of the country had been that it had a different legal system, a different local authority structure, a different education system and all the rest of it. I do not think we should be appalled. I am not saying that you are appalled. I do not think we should be too upset by the idea that one area can have different powers from another. It is a very British thing.

The Chair: I am not appalled. It is a question that is asked, and we will probably reflect on it. I just wanted to hear. A product of an unwritten constitution is that you have flexibility, and your unwritten constitutional settlement becomes the outcome of the decisions that that allows. Does anyone else have a question?

Lord Anderson of Ipswich: Mr McFadden, you mentioned that the first meeting of the Council of the Nations and Regions focused on investment in energy and what you rightly described as a transformation in the generation and distribution of energy that we are looking at, at the moment. It occurred to me as you were speaking that if there is one region of the United Kingdom that is seeing the effects of that more than any other, whether you are thinking nuclear, offshore wind, solar or transmission, it is East Anglia, yet East Anglia had no representation whatever in the Council of the Nations and Regions. I understand that your response to that is that there may be a process whereby they could achieve a seat at this coveted table, whether by some new mayor, perhaps of East Anglia or parts of East Anglia. I just want to know what the plans are and what the offer is specifically to East Anglia, and since it seems that these important discussions are already taking place how long it will be before East Anglia has a place at that table.

Pat McFadden MP: East Anglia like everywhere in the country, as I said, has the offer of coming together in some sort of collective representation structure. If that offer was not taken up, the question would remain: who would you then say represented East Anglia? Somebody has to. It goes back to the question Lord Foulkes asked me a few minutes ago. If it is not an elected mayor, who is it? You are still left with that question if the offer is not taken up. I do not think it is for me to say it should be that person there or that particular local authority because I do not think that would go down too well in East Anglia.

Lord Beith: If the Secretary of State for Health and Social Care is taking

part in these discussions, does he have any responsibility at all to speak about health in England, which is actually all he is responsible for, or is he obliged to think in terms of health in the United Kingdom and the effects of the separate Governments pursuing different policies?

Pat McFadden MP: That is a really good, interesting example. We did not have a discussion about health, but let us say we did and the Secretary of State for Health and Social Care was there. He would of course know that health is a devolved matter in Scotland and Northern Ireland, and his responsibilities are for England. In terms of his responsibilities, it is clear, and nothing in the discussion affects the fact of what is devolved. Do I think there can be good mutual learning on how we run the health services or deal with common challenges on preventive health or perhaps something in Scotland that has been done that we could learn from in England? Is there the capacity for a constructive discussion on health respecting the devolution settlement? I firmly believe that there is. I do not believe that the fact that the Secretary of State for Health and Social Care is there changes in any way what we have legislated for in devolved government. It could show that one of the advantages of having devolved government with different systems with slightly different powers in different parts of the UK means that we can learn from one another.

The Chair: There is nothing in the proposals for the council that intrudes on the areas of devolved competence, basically—a hard line on that. If we develop the question a little more, fleshing out how the council fits into the overall approach to intergovernmental relations, there is an intergovernmental relations agreement and a whole series of powers in those devolved Governments. There has been a bit of concern expressed that somehow the engagement between central government and the devolved Governments is weakened or lessened because of the council, or that the access points that the intergovernmental agreement offers become weaker.

Pat McFadden MP: It should be strengthened; it should not be weakened. We spoke earlier about how the previous system was working. I do not think the devolved Governments had much faith in it before, to be honest. The comment that you heard from a previous First Minister for Northern Ireland probably reflects some of that. I certainly do not think it weakens things. There is underneath it interministerial work on specific subjects, and a lot of official contact.

To give the committee an example outwith the Council of the Nations and Regions, during the summer, when we started to get reports of the Mpox outbreak in Africa and we had to consider what would happen if we got cases in the UK, I chaired two or three meetings involving the Health Ministers from Scotland, Wales and Northern Ireland and the Secretary of State for Health and Social Care in the UK Government to discuss preparations, whether we should buy vaccines, and what would be good codes of practice should a case be identified. We could not be sure whether, if a UK case was going to be identified, it would happen in

England, Scotland or Wales. We had a very good dialogue on an issue of common interest, with full respect for the devolved settlement in the discussion, to make sure that we were all prepared if there was an outbreak in the UK.

Q57 The Chair: There is just one other issue. We talked about the Sewel convention at the beginning, but I want to develop it. It is the issue of consent both ways—reciprocity when a devolved Government take an action that may not be appropriate and they should consult the central government. There is the whole issue of consultation and seeking consent around the Sewel convention on legislation, as well as an increasing use of delegated powers impinging on areas of devolved competence or legislation that is being carried. We have focused on that issue. Although the Delegated Powers and Regulatory Reform Committee takes the wider issue of parliamentary sovereignty and the Executive, we have added to that by particularly focusing on the integrity of the relationship between central government and the devolved Governments. We can see some changes. I engage with the devolved Parliaments through the Interparliamentary Forum. They are conscious there is a reset in the relations. They can sense a change. It is the issue of evidence of that change.

Would you like to describe to us how you see resetting the relationship with the devolved Governments in seeking consent or consulting them where delegated legislation is used instead, recognising, as the Constitution Committee always has, that at the end of the day parliamentary sovereignty can prevail? Can you express your new approach or reset of an approach on seeking consent where it is possible?

Pat McFadden MP: That is what we want to do. We want to respect the devolution settlement. There will be occasions when we need to seek a legislative consent Motion for one reason or another. You hope that, with reasonable dialogue, you can get the legislative consent Motion. In the real world, it might not always be possible. If it is not possible, you have a decision to make. I do not want to pre-empt what that decision will be in any given situation. Constitutionally, the UK Government can still decide to legislate. That did not happen very much until 2018. It has happened a bit more since. Most of the time it works quite well, and we want it to work well, but you cannot give 100% guarantees in the future. You have to work with the convention and remember that it is a convention.

The Chair: I am not disputing that. But what initiatives, if any, have been taken to change the culture around that more proactively?

Pat McFadden MP: We are not interested in grievance or picking fights for fight's sake. We are trying to have a good, normal working relationship, and we hope that that is the spirit in which everybody else is approaching it, too. I can only speak for the UK Government. That is what we want to do.

The Chair: We need reciprocity.

Q58 **Baroness Goldie:** I am anxious to make sure the room is not cluttered up with unnecessary furniture. Has the intended role of a Prime Minister's envoy to the nations and regions been abolished?

Pat McFadden MP: She decided not to take up the role. As we meet today, we do not have plans to appoint somebody else to the role.

Baroness Goldie: I am very grateful, Mr McFadden, because I have genuinely found fascinating all that the three of you have contributed this morning. It seems to me that there is a very comprehensive structure. I do not think we need unnecessary augmentation if there is a functioning core structure.

Pat McFadden MP: Whatever the structure is, we will try to make it work.

Baroness Goldie: Thank you.

Q59 **Lord Foulkes of Cumnock:** You mentioned that relations with the devolved authorities need good will on both sides. There have been a number of examples in Scotland, as you know, that have caused concern to a number of us, where the Scottish Government appear to be carrying out functions that are not devolved and are spending money on areas that are not devolved. Is there anything more that the UK Government can do at the very least to encourage them to desist from doing that?

Pat McFadden MP: Give me an example, Lord Foulkes.

Lord Foulkes of Cumnock: One example is the whole range of documents that they produced on independence when the constitution is not devolved. The second is the opening of offices in areas where there are already embassies and high commissions representing Scotland through the FCDO and the Scotland Office. There are a number of others, such as Angus Robertson travelling the world ostensibly as the Foreign Minister of an independent country.

Pat McFadden MP: We have one Foreign Secretary for the UK, and that is recognised in the devolution settlement. I want a good working relationship with the Scottish Government, the Welsh Government and the Northern Ireland Government. There is one thing I would reflect on. It is a long time since I have lived in Scotland, so I tread warily and carefully. My sense is that there is a desire among the public in all parts of the UK for the different Governments that we have to work together in the common interest, and that maybe there is a little weariness about some of the division that we have had in recent years. I understand why people feel like that, and we hope to operate in the spirit of that feeling.

Lord Foulkes of Cumnock: That is helpful. Thank you.

Lord Thomas of Gresford: If there is an issue of legislative competence, who in the UK Government would take responsibility for putting forward the UK's view on that? The Scottish Government may say, "We have powers in this particular area and you must not trespass

into it", so a dispute arises. What happens?

Pat McFadden MP: Such a dispute was settled in the Supreme Court quite recently. The legislative competence is set down in the legislation that founded these bodies. We have legislated here for the legislative competence.

The Chair: The final arbiter is the Supreme Court, I suppose. Thank you for coming. It is much appreciated.